IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4055 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PANKAJ @ KARAN BALUBHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4055 of 2001

MS BANNA DUTT FOR MR AR SHAIKH for Petitioner No. 1

MR SS PATEL for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/09/2001

ORAL JUDGEMENT

1. In exercise of powers conferred under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Rajkot City, Rajkot, vide order dated February 21, 2001, Annexure A to the petition, detained the

petitioner/detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a dangerous person within the meaning of section 2 (c) of the Act and as five cases under Chapter 17 of the Indian Penal Code are registered against him which are pending investigation and statements of two witnesses were recorded, according to the detaining authority, the activities of the petitioner were prejudicial to the maintenance of public order and hence powers under Section 9 (2) of the Act were exercised and detained the petitioner.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of mandamus or any appropriate writ, order or direction quashing and setting aside the order of detention dated February 21, 2001 and to set the petitioner at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Ms. Banna Dutt, learned advocate for the petitioner, has restricted her arguments to the fact that subjective satisfaction recorded by the detaining authority for exercising powers under Section 9 (2) of the Act cannot be considered as genuine. To bring home his submission, reliance is placed on the statements of the witnesses which were recorded on February 17, 2001 and February 18, 2001 and they were verified on February 19, 2001 and thereafter immediately on February 21, 2001 the detaining authority has passed the order of detention and, therefore, it can be said that the detaining authority has not exercised powers under section 9 (2) of the Act properly as he had no sufficient time to examine the statements of the witnesses.

5. Besides this, so far as five offences registered under Chapter 17 of the IPC are concerned, they are not relating to breach or disturbance of public order but they are relating to breach of law and order situation and, therefore, the activities of the petitioner cannot be said to be in the realm of public order. He, therefore, contended that the petitioner cannot be called a dangerous person within the meaning of Section 2 (c) of the Act. On the aforesaid two submissions, according to the learned advocate for the petitioner, the detention order is vitiated and, therefore, same may be quashed and set aside by allowing the petition and setting the

petitioner at liberty forthwith.

6. Mr. S.S. Patel, learned AGP has opposed this petition. However, he does not dispute the factual aspect of date of recording and verifying the statements of the witnesses as well as date of passing the order of detention. He has conceded that the activities of the petitioner cannot be said to be in the realm of the public order. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Apex Court as well as this Court.

7. Similar question arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat, 1993 (2) GLR 1659 where the statements of the witnesses were recorded on 16.10.1992 and order of detention was passed on 17.10.1992 and the Division Bench of this Court has observed that the powers under section 9 (2) of the Act were improperly exercised and was held to be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and, therefore, the detention order was quashed. Applying the principles laid down by the Division Bench of this Court in the case of Kalidas (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. At the cost of repetition, be it stated that statement of one witness was recorded on February 17, 2001 and statement of another witness was recorded on February 18, 2001 and they were verified on February 19, 2001 and immediately thereafter on February 21, 2001 the order of detention came to be passed. Therefore, on this ground alone the order of detention is vitiated.

7. So far as five offences under Chapter 17 of the IPC registered against the petitioner are concerned, there is no doubt that the activities on the basis of which the cases are registered against the petitioner do not fall within the realm of public order and on the hasis of the material on record it cannot be said that the petitioner is a dangerous person.

8. I am fortified in my above view by the judgment of this court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat and others, 2000 (3) GLR 2696. In the said case three criminal cases for offences under sections 386, 406, 420 and 447 of the IPC were pending against the detenu and therefore on the facts of that case it was held that the activities of the detenu cannot be said to be in the realm of public order and on the material on record it cannot be said that the

petitioner is a dangerous person and consequently the detention order was quashed. The ratio laid down in the aforesaid case is squarely applicable to the facts of the the present case. Therefore on this count also the order of detention stands vitiated. On over all view of the matter, the impugned order of detention requires to be set aside and the petition deserves to be allowed.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated February 21, 2001 passed against the petitioner detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)